FILED
FEB 14 2003
OFFICE OF THE CLERK

No. 02-809

In The Supreme Court Of The United States

STATE OF MARYLAND,
Petitioner,
v.
JOSEPH JERMAINE PRINGLE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF OF OHIO AND 19 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JIM PETRO
Attorney General of Ohio
DOUGLAS R. COLE
State Solicitor
STEPHEN P. CARNEY*
Senior Deputy Solicitor
**Counsel of Record*
M. SCOTT CRISS
Assistant Solicitor
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
Counsel for *Amici* States

Of Counsel:
David M. Gormley
3926 Sandstone Circle
Powell, Ohio 43065

18 pp

WILLIAM H. PRYOR, JR.
Attorney General
State of Alabama

M. JANE BRADY
Attorney General
State of Delaware

MARK J. BENNETT
Attorney General
State of Hawaii

STEVE CARTER
Attorney General
State of Indiana

PHILL KLINE
Attorney General
State of Kansas

RICHARD P. IEYOUB
Attorney General
State of Louisiana

MIKE COX
Attorney General
State of Michigan

BRIAN SANDOVAL
Attorney General
State of Nevada

PATRICIA A. MADRID
Attorney General
State of New Mexico

W. A. DREW EDMONDSON
Attorney General
State of Oklahoma

HARDY MYERS
Attorney General
State of Oregon

D. MICHAEL FISHER
Attorney General
Commonwealth of
Pennsylvania

ANABELLE RODRIGUEZ
Attorney General
Commonwealth of
Puerto Rico

HENRY D. MCMASTER
Attorney General
State of South Carolina

LARRY LONG
Attorney General
State of South Dakota

GREG ABBOTT
Attorney General
State of Texas

MARK L. SHURTLEFF
Attorney General
State of Utah

WILLIAM H. SORRELL
Attorney General
State of Vermont

DARRELL V. MCGRAW JR.
Attorney General
State of West Virginia

QUESTION PRESENTED

Whether the Fourth Amendment allows a law enforcement officer to arrest multiple occupants of a car when the officer discovers drugs and a large amount of cash in the passenger compartment of the car, and all of the car's occupants deny ownership of the contraband.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

STATEMENT OF *AMICI* INTEREST 1

REASONS FOR GRANTING THE WRIT 2

I. The Court Should Grant Certiorari To Determine The Probable Cause Standard That Governs Multiple-Suspect Arrests. 3

II. The Ruling Of The Court Below Runs Counter To The Approach Followed By Other Courts In Similar Multiple-Suspect Cases. 7

III. Police Officers Need Guidance On The Question Presented. 10

CONCLUSION 11

TABLE OF AUTHORITIES

PAGE

Cases

Adams v. Williams,
407 U.S. 143 (1972).....6

Atwater v. City of Lago Vista,
532 U.S. 318 (2001).....3

Bettis v. United States,
408 F.2d 563 (9th Cir. 1969).....9

Brinegar v. United States,
338 U.S. 160 (1949).....3, 5

Commonwealth v. Chase,
575 A.2d 574 (Pa. Super. Ct. 1990), *appeal denied*, 590 A.2d 295 (Pa. 1990).....8

Draper v. United States,
358 U.S. 307 (1959).....6

Dunaway v. New York,
442 U.S. 200 (1979).....10

Fernandez v. Perez,
937 F.2d 368 (7th Cir. 1991).....9

Florida v. J.L.,
529 U.S. 266 (2000).....3

Florida v. Royer,
460 U.S. 491 (1983).....4

Goldsmith v. United States,
277 F.2d 335 (D.C. Cir 1960).....5

Illinois v. Gates,
462 U.S. 213 (1983).....3

Michigan v. DeFillippo,
443 U.S. 31 (1979).....5

People v. Foster,
788 P.2d 825 (Colo. 1990).....7

People v. Sutherland,
683 P.2d 1192 (Colo. 1984).....8

People v. Vermouth,
98 Cal. Rptr. 65 (Cal. App. 1971).....8

Rogers v. State,
586 So. 2d 1148 (Fla. App. 1991).....7

State v. Horton,
625 N.W.2d 362 (Iowa 2001), *cert. denied*,
534 U.S. 928 (2001).....8, 9

State v. Jacobs,
704 S.W.2d 300 (Mo. App. 1986).....7

State v. Jordan,
605 P.2d 646 (Ore. 1980), *cert. denied*,
449 U.S. 846 (1980).....8

State v. Mitchell,
482 N.W.2d 364 (Wisc. 1992).....8

United States v. Cortez,
449 U.S. 411 (1981).....3

United States v. Di Re,
332 U.S. 581 (1948).....4, 7, 9

Wyoming v. Houghton,
526 U.S. 295 (1999).....4, 9

Ybarra v. Illinois,
444 U.S. 85 (1979).....4

Other Authorities

2 W. LaFave, Search and Seizure, §3.2(e)
(3d ed. 1996).....5

STATEMENT OF *AMICI* INTEREST

The State of Ohio and 19 other *amici* States write to urge the Court to grant certiorari in this case. The judgment of the court below – holding that "a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger" in the car, Pet. App. at 23a – limits the arrest powers of law enforcement officers in a way that this Court has never endorsed. That ruling conflicts with the approach followed by a number of other state and federal courts in multiple-suspect cases like this one, where all of the potential suspects deny any wrongdoing even though a crime has clearly been committed. By imposing on the government at the time of an arrest the kind of admittedly-higher standard that the government must later meet at trial, the court below has muddled Fourth Amendment law, and has sown confusion in the law enforcement community, which often faces just the kind of situation that the officer in this case did.

Like Maryland, most States have statutes on the books that allow a law enforcement officer to make warrantless arrests whenever the officer has developed probable cause to believe that certain crimes have been committed by a suspect. On a daily basis, officers on the street rely on those statutes – and on the long history of Fourth Amendment jurisprudence that supports them – to make probable cause determinations and to arrest those persons linked to criminal activity. In performing those duties, law enforcement officers in every State look to the courts for clear and consistent guidance on the scope of the term "probable cause" in the Fourth Amendment.

The decision below is just the latest in a growing line of cases that have addressed the application of the Fourth Amendment's probable-cause standard in multiple-suspect

situations, and those cases have not produced a clear answer for police officers who are striving earnestly to protect the rights of innocent bystanders while ensuring that the guilty do not slip away. This case presents a sound vehicle for the Court to resolve that uncertainty.

At stake are three important interests for the States: (1) the ability of the States and their local communities to arrest suspected criminals when probable cause supports those arrests; (2) the interest in helping police officers make sound probable-cause-to-arrest determinations without imposing on them the burden of deciding whether prosecutors will later be able to prove the case at trial; and (3) eliminating the confusion that now exists surrounding officers' arrest powers in multiple-suspect situations like the one in this case.

The *amici* States urge the Court to hear this Fourth Amendment case so that the considerable uncertainty that now marks this area of the law can be resolved.

REASONS FOR GRANTING THE WRIT

The Maryland high court's approach to the probable-cause issue in this case warrants review here for several important reasons. First, this Court has not squarely addressed the question of whether and when probable cause to arrest can be found in multiple-suspect situations, though this Court has of course said that the government's burden in finding probable cause to arrest is not as great as the government's later burden of proving guilt at trial. Second, the judgment below differs in its outcome from the rulings of other state and federal courts, and those conflicting decisions have generated considerable confusion on the issue. Third, police officers routinely face similar situations on a regular basis, and they deserve to know how they ought to resolve them.

I. The Court Should Grant Certiorari To Determine The Probable Cause Standard That Governs Multiple-Suspect Arrests.

While this Court has repeatedly addressed the probable cause standard, it has never directly examined how that standard should be applied in a multiple-suspect scenario like this one. What the Court *has* done is shape the definition of probable cause in cases involving (1) just one suspect, or (2) multiple individuals in factual situations much different from the one presented in this case. Neither of those lines of cases resolves the question that this case raises.

Over fifty years ago, this Court defined probable cause as a commonsense, nontechnical concept that allows law enforcement officers to make determinations based on "factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). That definition of probable cause requires only an evaluation that looks to the totality of the circumstances and the "probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983). As the Court has said, "practical people formulate[] certain commonsense conclusions about human behavior," and just as "jurors . . . are permitted to do the same, . . . so are law enforcement officers." *United States v. Cortez*, 449 U.S. 411, 418 (1981).

Many times, the Court has applied that common-sense notion to the issue of probable cause in single-suspect cases. *See, e.g., Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) (a warrantless arrest for a fine-only offense was permissible under the Fourth Amendment); *Florida v. J.L.*, 529 U.S. 266 (2000) (an anonymous tip did not exhibit sufficient indicia of reliability to justify an investigatory

stop); *Florida v. Royer*, 460 U.S. 491 (1983) (police had no probable cause to arrest a nervous young man who paid cash for an airline ticket from Miami to New York under an assumed name).

In contrast, the Court's cases involving *multiple* suspects have often focused on the validity of *searches*, rather than – as does this case – on the validity of multiple arrests. *See, e.g., Ybarra v. Illinois*, 444 U.S. 85 (1979) (a search warrant for a tavern and its bartender did not permit body searches of the bar's patrons); *United States v. Di Re*, 332 U.S. 581 (1948) (probable cause to search a car did not justify a body search of a passenger). As the Court has said only recently, "[t]hese cases turned on the unique, significantly heightened protection afforded against searches of one's person." *Wyoming v. Houghton*, 526 U.S. 295, 303 (1999).

To be sure, in *Di Re* the Court rejected the government's argument that Di Re could be arrested simply because he was present in a car in which the driver alone had just committed an illegal transaction with an undercover informant. But the Court's conclusion that "Di Re's mere presence" near the transaction was insufficient to justify his arrest, 332 U.S. at 594, does not resolve the situation in this case, where *someone* in the car no doubt possessed the illegal drugs and the cash that the officer found, and yet the officer's initial investigation did not link that contraband to any particular occupant of the car. The officer in this case did not try to search a seemingly innocent bystander, nor arrest one suspect after seeing another passenger commit the crime. Instead, the officer sensibly concluded that he had probable cause to arrest all of the occupants in the car, once all three of them denied any knowledge about the contraband that the officer had legally discovered.

A well-known treatise writer offers this common-sense approach to a scenario not far afield from the one in this case:

> A sees B and C bending over a dead man, D. B and C each accuse the other of murdering D. A is not sure that either B or C did the killing, but he has a reasonable suspicion that either B or C killed D. A is privileged to arrest either or both.

2 W. LaFave, Search and Seizure, §3.2(e), p. 64 (3d ed. 1996) (quoting Restatement (Second) of Torts § 119, comment i (1965)). LaFave further notes that because an arrest also serves "an investigative function, . . . '[t]he quantum of evidence necessary to *sustain* an arrest is not, in all circumstances, the same quantum necessary to make out probable cause for charging a person with the crime.'" *Id.* at 66 (emphasis added) (quoting *Goldsmith v. United States*, 277 F.2d 335, 343 (D.C. Cir. 1960) (Burger, J.)).

That latter point is one that this Court has echoed, for as the Court has said, there is a "large difference" between what is required to show probable cause and what is required to prove guilt in a criminal case. *Brinegar*, 338 U.S. at 173. There is also a significant difference between the respective roles of the law enforcement and legal entities that determine each of those questions. *Id.* The Court recognized in *Brinegar* that requiring arresting officers to first gather evidence sufficient for a conviction would effectively hamstring law enforcement efforts and harm the public interest. As the Court has said, "[t]he validity of the arrest does not depend on whether the suspect actually committed a crime," and "the kinds and degree of proof and the procedural requirements necessary for a conviction are not prerequisites to a valid arrest." *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979).

Probable cause – not sufficiency of the evidence for a conviction – ought to guide the officer in the field when he decides whether or not to arrest a suspect, and as the three dissenters in the court below said, "[w]hether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics . . . to warrant a conviction is another question." Pet. App. at 41a. That statement by the dissenters below echoes this Court's own words in *Adams v. Williams*, 407 U.S. 143, 149 (1972) ("[p]robable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction").

Whether the court below rightly or wrongly examined the probable cause issue through a lens focused on the State's ability to prove its case at trial, the fact remains that this Court's precedents do not resolve the question that Maryland has raised. While all agree that probable cause is the standard, how that standard should be applied in a multiple-suspect case like this one is unclear. What we do know is that a crime had been committed in a lawfully-stopped car, and none of the three occupants of the car claimed ownership of the drugs and the cash. While the evidence at the time might not have been sufficient to convince a trier of fact that any particular occupant of the car was the owner of the contraband, the officer's decision to arrest all three occupants of the car seems consistent with the maxim that "[p]robable cause exists where the facts and circumstances . . . are sufficient in themselves" to suggest that "an offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959) (quotations and brackets omitted). The judgment below finding otherwise warrants review now.

II. The Ruling Of The Court Below Runs Counter To The Approach Followed By Other Courts In Similar Multiple-Suspect Cases.

Courts around the country have resolved the question in this case in different ways. A number have relied on this Court's decision in *United States v. Di Re*, 332 U.S. 581, 592 (1948) (where "only [one] person" had "committed a possible misdemeanor in the open presence of the officer," and "the officer had no such information as to Di Re," the arrest of Di Re himself violated the Fourth Amendment). Cases in which courts have applied that holding include *People v. Foster*, 788 P.2d 825, 829 (Colo. 1990) (where a car's driver claimed ownership of a stolen motorcycle that was hitched to the car, the police lacked probable cause for an arrest of the car's passenger); *Rogers v. State*, 586 So.2d 1148, 1151-52 (Fla. App. 1991) (an informant's tip about the drug-running activities of the driver of a van gave police officers probable cause to arrest that driver, but the officers lacked any probable cause to arrest the van's passenger); *State v. Jacobs*, 704 S.W.2d 300, 301-02 (Mo. App. 1986) (the arrest of a car's inebriated driver was proper, but the police officer had no probable cause to arrest and search a back seat passenger who was sipping a soft drink).

In each of those cases, as in *Di Re*, officers had articulable and reasonable grounds for arresting particular suspects, but the officers had no reasonable basis for arresting others who were seemingly just along for the ride.

That line of cases does not easily lend itself to resolving this particular case, however, where, as the dissenters below explained, the arresting officer "could [have] reasonably believe[d]" that the three occupants of the car "were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking,

or were conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual." Pet. App. at 41a.

A number of state courts have resolved multiple-suspect cases in the way that the dissenters below urged in this case. *See, e.g., People v. Vermouth*, 98 Cal. Rptr. 65, 71 (Cal. App. 1971) (an officer properly arrested a car's driver and passenger where the circumstances suggested that both were in possession of weapons and cash found in the vehicle); *People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984) (officers had probable cause to arrest and obtain blood samples from both occupants of a vehicle involved in an accident when both occupants accused each other of being the driver); *State v. Jordan*, 605 P.2d 646, 652 (Ore. 1980) (the arrest of more than one person was appropriate where the occupants of a house would not identify who among them was the suspect listed on an arrest warrant), *cert. denied*, 449 U.S. 846 (1980); *Commonwealth v. Chase*, 575 A.2d 574, 578 (Pa. Super. Ct. 1990) (officers may properly arrest two suspects where there is probable cause to believe that either of them committed the criminal offense), *appeal denied*, 590 A.2d 295 (Pa. 1990); *State v. Mitchell*, 482 N.W.2d 364, 368-69 (Wisc. 1992) (an officer had probable cause to arrest both occupants of a vehicle in which the officer detected the presence of marijuana odor and smoke).

Representative of this line of cases is the recent ruling in *State v. Horton*, 625 N.W.2d 362 (Iowa 2001), *cert. denied*, 534 U.S. 928 (2001). In that case, the state supreme court found that police officers could have reasonably believed that either occupant of a vehicle was in possession of marijuana, and so the officers had probable cause to arrest either occupant. The issue was not, the court explained, whether there was sufficient evidence to support a conviction or an indictment of either suspect. 625 N.W.2d at 365. Instead, according to the court, the officers on the scene had

properly focused on whether reason and common sense suggested that each of the suspects had committed a crime. The facts and circumstances did so suggest, and the arrest of both was proper, the court concluded. 625 N.W.2d at 367.

Tension likewise exists between the judgment below and the approach followed by some federal circuit courts. *See, e.g., Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (an officer had probable cause to arrest the three occupants of a vehicle after finding a single handgun loaded with metal-piercing bullets in the trunk of the car); *id.* ("[o]bviously, absent an explanation to the contrary, the bullets were the property of one, two or all three of the occupants of the car"); *Bettis v. United States*, 408 F.2d 563, 567 (9th Cir. 1969) (a person's status as an occupant of a car, his help with unloading the car, and his suspicious gaze at officers "might be sufficient as a basis for making an arrest of him at the scene as a probable party" involved in a drug transaction, even though those same facts would not be sufficient to convict him of the crime). As this Court has said, a car passenger "will often be engaged in a common enterprise with the driver, and will often have the same interest in concealing the fruits or the evidence of their wrongdoing." *Wyoming v. Houghton*, 526 U.S. at 304-05.

As Maryland's petition explains in greater detail, courts around the country have wrestled often with the dilemma presented by multiple-suspect cases like this one. The kind of situation resolved by this Court decades ago in *Di Re* – where all evidence pointed toward one suspect and not the other – is an easy one for lower courts to settle today. Much tougher – and much more likely to lead to differing outcomes in different States – are the situations like the one in this case, where a crime was clearly committed, but the evidence at the scene did not directly implicate or exonerate any of several possible suspects. The continuing uncertainty on the question, coupled with the seemingly improper focus

in the court below on the government's inability to prove all elements of the crime at the time of the arrest, points toward the need for guidance from this Court now on the question that Maryland has raised.

III. Police Officers Need Guidance On The Question Presented.

Law enforcement officers frequently encounter the kind of multiple-suspect scenario that the court below examined. Where an officer's on-the-spot investigation shows that a crime has been committed, where all potential suspects deny any wrongdoing, and where the facts and circumstances point toward the possibility that all (or at least more than one) of the suspects has participated in the crime, what may the officer do next? That question is critically important to law enforcement officers in every State, and the uncertainty generated by conflicting court decisions does not make the officers' already-difficult job any easier.

As this Court has said, a "single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213-14 (1979). We readily acknowledge that each Fourth Amendment case will always necessarily turn on its own facts, and no simple formula can ever resolve all of the uncertainty that surrounds probable-cause-to-arrest questions in the close cases. Yet the frequency of problem that the officer in this case faced, the importance of the question for those who may innocently or otherwise find themselves in situations like the one that gave rise to this litigation, and the earnest desire of the States and their law enforcement officers to bring greater clarity to an area of the law now muddied by

a patchwork of differing court rulings across the country prompt us to join Maryland in urging the Court to hear this case now.

CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant Maryland's petition.

Respectfully submitted,

JIM PETRO
Attorney General of Ohio
DOUGLAS R. COLE
State Solicitor
STEPHEN P. CARNEY*
Senior Deputy Solicitor
**Counsel of Record*
M. SCOTT CRISS
Assistant Solicitor
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
Counsel for *Amici* States

Of Counsel:
David M. Gormley
3926 Sandstone Circle
Powell, Ohio 43065

January 2003